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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,220	01/16/2001	Keiichi Hayashi	Q62674	9946

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EXAMINER	
PEREZ, JULIO R	
ART UNIT	PAPER NUMBER
2617	
MAIL DATE	DELIVERY MODE
08/07/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/759,220	HAYASHI, KEIICHI	
	Examiner	Art Unit	
	JULIO R. PEREZ	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 July 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-10 and 12-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-3,5-10 and 12-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 January 2001* is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 07/14/08 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims contain "performing modulation ***on a tone representative of*** the melody data", which is not described in the specification. However, examiner interprets the limitation as *modulation processing based on said*

tone information contained in said melody, which melody still contains tone or group of tones.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-3, 5-10, 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin et al (US006366791B1) in view of Yoshino (US006308086B1).

Regarding claim 1, Lin et al. disclose a mobile communication terminal equipped with an Internet browser function, comprising: means for fetching melody data from a web-based server apparatus by using said browser function (col. 3, lines 9-29; col. 4, lines 1-11; Figs. 2, 4, the mobile stations comprise the capability to access the web page of the network in order to download musical scores, that is melody data, containing ringing tones); and tone setting means for setting ringing tones based on tone information contained in said melody data (col. 4, lines 1-57; col. 5, lines 1-2; col.

5, lines 16-27; Fig2. 2, 4, the ringing tones can be implemented once received and stored within the SIM, where the ringing tones are programmed in accordance with the ringing tone patterns).

What Lin does explicitly disclose is wherein said tone setting means sets ringing tones by performing a modulation processing on a tone representative of the melody based on said tone information contained in said melody data.

Yoshino teaches a mobile communications terminal with extraction of audio signal frequencies means, which, in turn need to be converted to readable form to a transducer. Modulation occurs in Yohino, thus, modulation processing occurs on scale, which are tones of the musical scales. Furthermore, extracting audio signal frequencies, i.e., musical scale signals are modulated in units of corresponding frequencies, therefore, modulation occurs (col. 1, lines 54-63; col. 2, lines 46-49; col. 4, lines 32-40; col. 5, l;ines21-29;).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further implement the communication terminal of Lin et al. so as to include modulation processing as per the teachings of Yoshino so that the set ringing tones in the musical scores can be executed as ringing tone patterns on the MS.

Regarding claim 2, the combination discloses the mobile communication terminal, wherein if said melody data contains no tone information, said tone setting means sets a ringing tone based on preset tone information (Lin, col. 3, lines 31-67; col. 4, lines 1-11, the download is executed based on the contents of the music or tones

desired by the subscriber and approved beforehand by the subscriber; if no tone is approved, hence, no tone would be downloaded, and indeed the same tone some tones already stored will stay active).

Regarding claim 3, the combination discloses the mobile communication terminal, wherein if said melody data contains tone information, said tone setting means judges the validity of said tone information (Lin, col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, the system may determine the type of tones to be downloaded during the decision to acquire the tones from the web server).

Regarding claims 5, 12, the combination discloses wherein said tone information contained in said melody data constitutes tone parameters used for said modulation processing (Yoshino, col. 4, lines 34-36, the extracting of frequency components from the audio signal, corresponds to ringing or tone parameters).

Regarding claims 6, 7, 13, 14, Lin does not explicitly disclose the mobile communication terminal, further comprising: ringing-speed setting means for setting a tempo at which a melody is played in accordance with said melody data.

Yoshino teaches a mobile communications terminal with periodicity controlling means to control the rhythm of a melody to be reproduced (col. 2, lines 54-55; col. 6, 16-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further implement the communication terminal of Lin et al. so as to include rhythm computational means as per the teachings of Yoshino et al.

so as to have means of a timing signal for setting a tempo; that is, the relative speed at which music is played in accordance with the melody data being received.

Regarding claim 8, Lin discloses a ringing method for a mobile communication terminal equipped with an Internet browser function, comprising: having access to a web-based server equipment by means of said browser function (col. 3, lines 9-29; col. 4, lines 1-11; Fig. 2, refs. 35, 40, 45, 55; Fig. 4, the mobile stations comprise the capability to access the web page of the network in order to download musical scores, that is melody data); notifying said server equipment of desired melody data in conformity with said access (col. 3, lines 21-29; Fig. 2, the terminal may be used to request musical tones from the server via the Internet); receiving said desired melody data from said server equipment (col. 3, lines 31-46; col. 4, lines 1-11, the mobile obtains the musical tones from the server for later playing); storing said received desired melody data (col. 2, lines 22-57; col. 4, lines 12-38; Fig. 4, the terminal possesses the capability to store the melody tones within); judging whether said stored melody data contains tone information (col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, the system may determine the type of tones to be downloaded during the decision to acquire the tones from the web server); fetching said tone information if it is judged that said melody data contains the tone information (col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, 4, the system may determine the type of tones to be downloaded during the decision to acquire the tones from the web server); setting a tone for playing a melody in accordance with said melody data, based on said fetched tone information (col. 4, lines 1-57; col. 5, lines 1-2; col. 5, lines 16-27, the ringing tones can be implemented

once received and stored within the SIM, where the ringing tones are programmed in accordance with the ringing tone patterns); and playing said melody in said set tone (it is inherent as evidenced by the fact that one of ordinary skill in the art would have recognized that the tone is to be played as soon as a ringing melody is downloaded, col. 3, lines 9-46).

What Lin does explicitly disclose is wherein said tone setting means sets ringing tones by performing a modulation processing on a tone representative of the melody based on said tone information contained in said melody data.

Yoshino teaches a mobile communications terminal with extraction of audio signal frequencies means, which, in turn need to be converted to readable form to a transducer. Modulation occurs in Yohino, thus, modulation processing occurs on scale, which are tones of the musical scales. Furthermore, extracting audio signal frequencies, i.e., musical scale signals are modulated in units of corresponding frequencies, therefore, modulation occurs (col. 1, lines 54-63; col. 2, lines 46-49; col. 4, lines 32-40; col. 5, l;ines21-29;).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further implement the communication terminal of Lin et al. so as to include modulation processing as per the teachings of Yoshino so that the set ringing tones in the musical scores can be executed as ringing tone patterns on the MS.

Regarding claim 9, the combination discloses the ringing method for a mobile communication terminal, wherein if said melody data contains no tone information, a

ringing tone is set based on preset tone information (Lin, col. 3, lines 31-67; col. 4, lines 1-11, the download is executed based on the contents of the music or tones desired by the subscriber and approved beforehand by the subscriber; if no tone is approved, hence, no tone would be downloaded, and indeed the same tone some tones already stored will stay active).

Regarding claim 10, the combination discloses the ringing method for a mobile communication terminal, wherein if said melody data contains tone information, the validity of said tone information is judged (Lin, col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, the system may determine the type of tones to be downloaded during the decision to acquire the tones from the web server).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JULIO R. PEREZ whose telephone number is (571)272-7846. The examiner can normally be reached on 10:30 - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc M. Nguyen can be reached on (571) 272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Julio R Perez/
Examiner, Art Unit 2617

8/1/08

/Duc Nguyen/
Supervisory Patent Examiner, Art Unit 2617